

## **REGISTRAR'S SUBMISSION PACKAGE**

### **BOARD OF MEDICINE**

#### **18 VAC 85-31-10 et seq.**

### **Regulations for the Governing the Practice of Physical Therapy**

#### **Analysis of Proposed Amendments to Regulation**

##### **1. Basis of Regulation:**

Title 54.1, Chapter 24 and Chapter 29 of the Code of Virginia provide the basis for these regulations.

Chapter 24 establishes the general powers and duties of health regulatory boards including the power to establish qualifications for licensure and responsibility to promulgate regulations.

§§ 54.1-2942 through 54.1-2948 establishes the requirement for the licensure of physical therapists and physical therapy assistants and specifies the powers and duties of the Advisory Board on Physical Therapy.

##### **2. Statement of Purpose:**

Amendments are proposed pursuant to a biennial review of regulations as required by the Public Participation Guidelines of the Board of Medicine and by Executive Order 23(98). As a result of its review, the Board proposes amendments to clarify the use of unlicensed persons in the practice of physical therapy, to require proof of English proficiency for graduates of schools located outside the United States or Canada, to require graduates of non-approved schools to provide documentation of certification by the Foreign Credentialing Commission on Physical Therapy, to establish the passing score for the examination and to clarify certain requirements for practice and supervision of physical therapy assistants. In addition, the proposed amendments establish an inactive licensure status and those requirements for renewal or reinstatement of licensure which are necessary to protect the public health and safety in the delivery of physical therapy services.

##### **3. Substance of Regulations:**

**18 VAC 85-31-10.** Definitions are proposed for: a) an “approved program” to specify those educational programs which are accredited for licensure; b) “FCCPT” as the Foreign Credentialing Commission on Physical Therapy; and c) “non-licensed personnel as an individual not licensed or certified by a health regulatory board and is performing patient care functions at the direction of a physical therapist or a physical therapist assistant. An amendment is proposed in the definition of “inactive practice trainee” to clarify the meaning of “inactive” as not having practiced for at least 320 hours within the past four years and as consistent with terminology used elsewhere in the regulations.

**18 VAC 85-31-25.** A new section is proposed to require licensees to furnish current name and address within 30 days of any change and to specify that notices mailed or served by the Board to the name and address on file shall be validly given.

**18 VAC 85-31-40.** The section on educational requirements is amended to specify that graduates of approved programs outside the United States or Canada must pass the Test of English as a Foreign Language or provide proof of English proficiency.

**18 VAC 85-31-50.** Regulations are amended for graduates of schools which are not approved by the board to require that such applicants in physical therapy provide documentation of certification by the FCCPT as evidence of equivalency in education and training. The requirements for a foreign-trained physical therapist assistant and for a traineeship have not been amended.

**18 VAC 85-31-60.** Amendments are editorial and not substantive. A new section 65 has been added to specify the current requirements for an examination and to set out the minimum passing score on the exam as a scale score of 600 or a score to be established by the Advisory Board.

**18 VAC 85-31-80.** An amendment is proposed to clarify that applicants for licensure by endorsement who has not been practicing in another jurisdiction for at least 320 hours within the four years immediately preceding application meet the requirements for a traineeship in 18 VAC 85-31-140. Other amendments in section 80 are editorial.

**18 VAC 85-31-90.** Amendments are proposed to clarify that the physical therapist gets a referral for treatment from a doctor of medicine, osteopathy, podiatry or dental surgery.

**18 VAC 85-31-100.** An amendment is proposed to change the term “physical therapy aide”, which is not a category of practitioner created by statute to the term “unlicensed personnel”, which is defined in regulation. An amendment is also proposed to clarify that the physical therapist shall supervise no more than 3 trainees at any one time.

**18 VAC 85-31-120.** Amendments are intended to clarify the schedule by which a physical therapist must re-evaluate a patient who is receiving treatment by a physical therapy assistant.

**18 VAC 85-31-130.** Amendments proposed on renewal of licensure are intended to be editorial.

**18 VAC 85-31-135.** A new section is proposed to allow a practitioner to request an inactive license without requiring evidence of continuing practice in physical therapy. Such a license does not entitle the licensee to perform any act which would require a license to practice. The proposed amendments would also establish a fee for inactive licensure and add requirements for reinstatement of an inactive license to active status to include: evidence of active practice hours in another jurisdiction equal to the number of years of inactivity and payment of the difference between the cost of an active and inactive license. An inactive licensee who cannot meet the requirement of active hours of practice must meet the requirements for a traineeship as specified in section 140.

**18 VAC 85-31-140.** An amendment is proposed to clarify the requirement for evidence of active practice in order to reinstate a license and to specify that a traineeship must be under the supervision of a physical therapist and to clarify who is required to do a traineeship as set forth in subsection A. The requirement for re-examination after a period of seven years of inactivity is deleted.

#### **4. Issues of the Regulation:**

**ISSUE #1. Type and amount of continuing competency requirements.**

In response to the statutory mandate for the Board of Medicine to develop regulations for the assurance of the continued competency of all its licensees, the Advisory Board reviewed its current requirement for hours of active practice as a pre-requisite for renewal of licensure. In these proposed regulations, there are no amendments for continuing education or other type of evidence of continued competency. However, the Advisory Board is continuing to monitor the research on continued competency, the requirements of other states, and the availability of credentialing organizations offering continued competency courses or activities.

**ISSUE #2. Requirements for reactivation of an inactive or lapsed license.**

In current regulations, there is a requirement for at least 320 hours of practice within the preceding four years in order to renew a license. The Board is proposing an inactive license at a reduced renewal fee for those practitioners who want to take a leave of absence or are now out-of-state and have no intention of engaging in active practice in the Commonwealth. In doing so, requirements for reactivation of such a license are necessary to ensure that practitioners are competent to resume practice. The Board determined that it was necessary for a practitioner whose license has been inactive to provide evidence of continuing competency hours equal to the amount of time the license has not been active. If a practitioner has not engaged in active practice during the time the license was inactive in Virginia, the Board currently requires that he serve a board-approved traineeship of 480 hours under the supervision of a licensed physical therapist.

**Advantages or disadvantages to the licensees**

The inactive licensure status will be beneficial to practitioners who are not currently living or practicing in the Commonwealth. They will be able to maintain a license at a reduced cost. If they choose to reactivate and return to practice, they will not have to apply for reinstatement or pay back renewal fees and penalty fees. They will only have to indicate that they have the required hours of active practice in another jurisdiction or have served the requisite traineeship and pay the difference between the inactive and active renewal fee. There are no disadvantages to licensees who will have the option of requesting inactive licensure.

**Advantages or disadvantages to the public**

Inactive licensure has no significant advantages or disadvantages to the public; these are persons who are not authorized the practice physical therapy in Virginia. Inactive licensure may have a minor positive impact on access to physical therapy services in that it would be less costly and burdensome for an inactive licensee who has taken a break from professional practice or has been living out-of-state to return to active practice and employment in Virginia. The public is well served by a requirement for a board-approved traineeship under supervision if a physical therapist or physical therapist assistant has not been professionally active for a period of time. Such a practice will provide assurance by the observation and guidance of a licensed therapist that the applicant for licensure or relicensure has regained his ability to practice.

**ISSUE #3. Licensure requirements for applicants trained in foreign schools.**

**a. Test of English as a Foreign Language requirement for graduates of approved schools.**

Graduates of schools approved by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association are recognized by the Board as having met its educational requirements for licensure. Those schools were traditionally located in the U. S. or Canada, so English proficiency was not an issue. The Commission has begun approving schools in foreign countries, so the Board has determined that a test of English (TOEFL) or some other proof of English proficiency is necessary. For example, if a graduate attended a school in Great Britain or a citizen of the U.S. attended a school in a foreign country, the TOEFL test would not be required.

**b. Documentation of certification by the Foreign Credentialing Commission on Physical Therapy for graduates of non-approved schools.**

As far as the Board has been able to determine, the only “non-approved schools” of physical therapy are located outside the United States and Canada. (The new school of physical therapy located at Shenandoah University will have accreditation completed before it graduates any students.) With foreign-trained therapists, there has been a problem throughout the U. S. with persons getting green cards or temporary occupational visas to work in this country as physical therapists who, once they get to the U. S., find that they do not meet the requirements for licensure in any state. Recent reforms in the immigration laws of the U.S. have created a requirement for internationally educated health care professionals entering the country to meet certain criteria before being granted a visa or applying for licensure. To ensure that those criteria have been met prior to entering the U.S., persons are being required to obtain pre-screening certification. Through the Federation of State Boards of Physical Therapy, the Foreign Credentialing Commission on Physical Therapy has been authorized to review credentials for the purpose of determining eligibility to be licensed as a physical therapist.

The Board is proposing that certification by the FCCPT be required for international candidates from non-approved educational programs. From its review of the criteria for certification by FCCPT, the Board determined that in every way its requirements met or exceeded Virginia’s requirements for licensure, with one exception – the lack of a traineeship in the U.S. The Board will continue to require a traineeship in Virginia to ensure through supervised practice that the foreign-trained applicant has the knowledge, skills and English proficiency to communicate with and practice safely on patients in the Commonwealth. Requiring certification by FCCPT will eliminate the need for submission to the board of documents on educational programs, equivalency of degrees, translations from embassies, proof of English proficiency, and verification of licensure status in another country.

**Advantages or disadvantages to the licensees.**

The TOEFL examination is the nationally recognized standard for determining English proficiency for internationals seeking to practice a profession in the U.S. To require a different standard would be burdensome, since the TOEFL exam is readily available at schools located in other countries. Students who can clearly demonstrate English proficiency will not be required to take the TOEFL exam.

Since pre-screening is required for entry into the U.S., applicants who have to get FCCPT certification will not have an unnecessary burden or barrier to licensure. The pre-screening process will eliminate the unfortunate situation of a foreign-trained physical therapist sacrificing to come to the U.S. only to

find that he is not eligible to sit for the examination or to become licensed in any state. Pre-screening may also reduce the extremely high failure rate for foreign-trained graduates on the national licensure examination (out of the 30 foreign-trained applicants currently pending with the Board of Medicine, 27 have already failed the licensure examination at least once).

#### **Advantages or disadvantages to the public.**

The public is better protected by having potential licensees pre-screened for their ability to practice safely in Virginia and to communicate in English with their patients. The FCCPT will authenticate the licensure status of any person who has been licensed or certified in another country, evaluate the equivalency of his degree, and ensure English proficiency.

#### **ISSUE #4. Clarification of practice responsibilities.**

The Code of Virginia requires a referral from a doctor of medicine, osteopathy, chiropractic, podiatry or dental surgery for treatment by a physical therapist. In 18 VAC 85-31-90, the title clearly referred to those particular practitioners, but the regulation spoke of the “referring practitioner”. As a result, there have been questions about whether a nurse practitioner or a physician assistant working for physician could make the referral as the “referring practitioner.” An amendment will clarify the requirement and make it explicitly consistent with the Code.

Currently, regulations provide for the practice and supervision of a physical therapy aide; such a category of practitioner was not created in the statute and therefore should not be created by regulation. The proposal establishes a definition for “unlicensed personnel” and utilizes that terminology in the regulation.

Two other practice issues have been addressed to specify more clearly the requirements and policies of the Board. Supervision by a physical therapist of trainees is restricted to no more than three; the proposed amendment would clarify that it means three trainees *at any one time*. The schedule for re-evaluation by a physical therapists of a patient being treated by a physical therapist assistant has been edited for greater clarity.

#### **Advantages or disadvantages to the licensees and the public.**

Greater clarity in the language of the regulation will serve to ensure more consistent compliance with regulations. Licensees will not inadvertently or unintentionally violate some provision of the requirements nor will they be pressured to accept a patient from a practitioner who is not authorized by law to make such a referral. The public is better protected by regulations which are specific in their requirements for practice and for supervision of unlicensed persons working in a physical therapy practice.

#### **Advantages and disadvantages to the agency:**

There are no specific advantages or disadvantages to the agency. There should be some additional clarity in the proposed regulations, which could contribute to better understanding and compliance by the licensees. More specificity in regulation sometimes results in less staff time spent in clarifying the intent of the rules.

## 5. Estimated Impact of the Regulations

### A. Projected number of persons affected and their cost of compliance:

There are 3,553 physical therapists and 1,267 physical therapy assistants licensed in Virginia. There should be no additional costs for complying with these regulations.

For those practitioners who are not actively practicing in Virginia, there would be a cost savings of \$30 each biennium for physical therapists and \$35 for physical therapist assistants if those persons request inactive licensure. The active renewal fee in Virginia is \$100 for physical therapists and \$70 for physical therapist assistants each biennium; the proposed inactive renewal fee is \$70 and \$35 per biennium; so the cost of licensure renewal should not be a major factor in a therapist's decision to seek inactive status.

For a very small number of applicants (less than 5 per year) who graduated from approved schools located outside the U. S. or Canada, there will be a new cost for taking the Test of English as a Foreign Language, unless they are able to document English competency by some means. The total fee of TOEFL is \$100, paid to the testing service; that fee includes the charge by the Sylvan Centers for administration of the examination. There is an additional charge of \$11 for providing the score to the state where the applicant is applying.

### B. Cost to the agency for implementation:

#### Impact on Board revenue:

For those practitioners who are taking a leave of absence or who are living out-of-state, there may be a percentage who would choose to take the inactive status and avoid the renewal requirements for active practice, but it is not known how many licensees would do so. Of the 3,553 licensed physical therapists, 842 list an out-of-state address; of the 1,267 licensed physical therapist assistants, 157 list an out-of-state address. Most of those are likely to be working in Virginia but living in D.C. or a bordering state. It is estimated that 30 to 40 may take an inactive status, which could result in a loss of \$750 to \$1,000 in revenue each biennium. What is unknown is how many of those licensees might chose to allow their license to lapse if an inactive licensure status is not available. If the estimated 30 to 40 practitioners who are not practicing in the state let their license lapse, there could be a loss in revenue to the Board of \$3000 to \$4000. Therefore, offering the option of inactive licensure could, in fact, result in a greater retention of revenue to the Board.

#### Impact on Board expenditures:

The agency will incur some costs (less than \$2000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities. Since these regulations are being amended simultaneously with other regulations of the Board, the costs of mailings, meetings and hearings will be shared by several professions. In addition, every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

The Board will incur some costs for review of an application to reactivate an inactive license; it will be necessary to verify that competency requirements have been met and that an applicant who has been licensed in another jurisdiction has not had disciplinary action taken or pending. Since the number who will reactivate each year is expected to be small, that effort can be performed by the current staff and costs absorbed within the budget of the Board.

Use of the Foreign Credentialing Commission on Physical Therapy may result in less staff and board time being spent reviewing an application package for a foreign trained therapist; the actual cost-savings, however, is likely to be insignificant. It is not expected that there will be any additional costs to the Board for compliance enforcement.

C. Cost to local governments:

There will be no impact of these regulations on local government.

D. Fiscal Impact Prepared by the Department of Planning and Budget: (To be attached)

E. Agency Response: The Board of Medicine concurs with the economic impact analysis prepared by the Department of Planning and Budget.

**c. Source of the legal authority to promulgate the contemplated regulation.**

**18 VAC 85-31-10 et seq. Regulations Governing the Practice of Physical Therapy** was promulgated under the general authority of Title 54.1 of the Code of Virginia.

**Chapter 24** establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

*§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:*

1. *To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
2. *To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
3. *To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
4. *To establish schedules for renewals of registration, certification and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The*

*special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*

11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

In addition to provisions in § 54.1-2400 which authorizes the Board to set qualifications and standards for licensure, the Code provides a mandate for licensure and involvement of the Advisory Board on Physical Therapy in:

**§ 54.1-2942. Unlawful designation as physical therapist or physical therapist assistant.**

*It shall be unlawful for any person who is not licensed under this chapter, or whose licensure has been suspended or revoked, or whose licensure has lapsed and has not been renewed, to use in conjunction with his name the letters or words "R.P.T.," "Registered Physical Therapist," "L.P.T.," "Licensed Physical Therapist," "P.T.," "Physical Therapist," "Physio-therapist," "P.T.T.," "Physical Therapy Technician," "P.T.A.," "Physical Therapist Assistant," "L.P.T.A.," "Licensed Physical Therapist Assistant," or to otherwise by letters, words, representations or insignias assert or imply that he is a registered physical therapist. The title to designate a physical therapist assistant shall be L.P.T.A. The license to practice as a physical therapist assistant shall show such fact plainly on its face.*

**§ 54.1-2943. Unlawful to practice physical therapy or physical therapist assistance except by referral and direction; exceptions.**

*A. It shall be unlawful for a person to engage in the practice of physical therapy except as a licensed physical therapist, upon the referral and direction of a licensed doctor of medicine, osteopathy, chiropractic, podiatry or dental surgery, or as provided in subsection B. Any person licensed as a physical therapist assistant shall perform his duties only under the direction and control of a licensed physical therapist and the patient's physician. The Board may promulgate regulations providing for the limited practice of physical therapy by a graduate physical therapist or physical therapist assistant enrolled in a traineeship program as defined by regulation of the Board under the direct supervision of a licensed physical therapist.*

*In granting licenses to out-of-state applicants, the Board may require physical therapists or physical therapist assistants to meet the professional activity requirements or serve traineeships according to its regulations.*

*B. This chapter shall not be construed to require referral and direction by a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery for the provision of physical therapy services to (i) a student athlete participating in a school-sponsored athletic activity while such student is at such activity in a public, private, denominational or parochial elementary, middle or high school, or public or private institution of higher education by a licensed physical therapist who is certified as an athletic trainer by the National Athletic Training Association or as a sports certified specialist by the American Board of Physical Therapy Specialties or (ii) employees solely for the purpose of evaluation and consultation related to workplace ergonomics by a licensed physical therapist.*

**§ 54.1-2946. Examinations given by Advisory Board; license issued or denied by Board; other duties of Advisory Board.**

*The Advisory Board shall, under the authority of the Board, provide the examinations to be taken by applicants for licensure as physical therapists and physical therapist assistants, and administer and grade such examinations. The results of such examinations shall be certified by the Advisory Board to the Board. The Board shall, on the basis of such examinations, issue or deny licenses to applicants to practice physical therapy or perform the duties of a physical therapist assistant. Any applicant who feels aggrieved at the result of his examination may appeal to the Board of Medicine.*

*The Advisory Board shall also assist the Board in matters pertaining to the regulation of physical therapists and the practice of physical therapy, and in the evaluation of evidence submitted in support of applications for physical therapist and physical therapist assistant licenses through reciprocity or endorsement, and in all other matters pertaining to physical therapy as the Board may request.*

**§ 54.1-2947. Requirements for admission to examination on physical therapy.**

*The examination of applicants to practice physical therapy shall be a written examination approved by the Board. Each candidate shall submit evidence, verified by affidavit and satisfactory to the Board, that he:*

- 1. Is eighteen years of age or more;*
- 2. Is of good moral character; and*
- 3. Is a graduate of a school of physical therapy approved by the Council on Medical Education and Hospitals of the American Medical Association or by the American Physical Therapy Association, or is a graduate of a school outside of the United States or Canada which offers and requires courses in physical therapy acceptable to the Board on the advice of the Committee.*

**§ 54.1-2948. Physical therapist assistants.**

*The examination of applicants to practice as physical therapist assistants shall be a written examination approved by the Board. Each candidate shall submit evidence, verified by affidavit and satisfactory to the Board, that he:*

- 1. Is eighteen years of age or more;*
- 2. Is of good moral character; and*
- 3. Is a graduate of a two-year college-level education program for physical therapist assistants approved by the Board.*

*Examinations of applicants shall be taken in the same manner as examinations for applicants for licensure as physical therapists.*

In addition to § 54.1-2400 (cited above), the Board is also authorized by § 54.1-103 to specify additional training for licensees seeking renewal of licenses.

*§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.*

A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

**d. Letter of assurance from the office of the Attorney General.**

See attached.

**e. Summary of Public Comment received in response to the Notice of Intended Regulatory Action.**

The Notice of Intended Regulatory Action was published on September 28, 1998 and subsequently sent to the Public Participation Guidelines Mailing List of the Board. There was no comment received during the 30-day comment period, but representatives of the Virginia Physical Therapy Association and the Federation of State Boards of Physical Therapy participated with the Advisory Board in the review of regulations and development of amendments.

**f. Changes to existing regulations.**

**18 VAC 85-31-10.** Definitions are proposed for: a) an “approved program” to specify those educational programs which are accredited for licensure; b) “FCCPT” as the Foreign Credentialing Commission on Physical Therapy; and c) “non-licensed personnel as an individual not licensed or certified by a health regulatory board and is performing patient care functions at the direction of a physical therapist or a physical therapist assistant. An amendment is proposed in the definition of “inactive practice trainee” to clarify the meaning of “inactive” as not having practiced for at least 320 hours within the past four years and as consistent with terminology used elsewhere in the regulations.

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## **g. Statement of reasoning for the regulations.**

### **Establishment of an inactive license.**

The Department of Health Professions sought legislation in the 1998 General Assembly to give authorization to all boards to issue an active license. Some boards within the Department already had such authority in the practice act for the particular professions regulated, but an amendment to § 54.1-2400 granted general authority to set out the qualifications, fees, and conditions for reactivation of inactive licensure.

While the requirements for biennial renewal of licensure for physical therapists and physical therapist assistants are not burdensome, the Board determined that all its licensees should have the option of requesting an inactive license if they are not currently practicing their profession.

### **Requirements for reactivation of an inactive or lapsed license.**

The Board is proposing an inactive license for those practitioners who want to take a leave of absence or are now out-of-state and have no intention of engaging in active practice in the Commonwealth. In doing so, requirements for reactivation of such a license are necessary to ensure that practitioners are competent to resume practice. The Board determined that it was necessary for a practitioner whose license has been inactive to provide evidence of competency in hours of active practice equal to that required during amount of time the license has not been active. If a practitioner has not engaged in active practice, the Board requires that he serve a board-approved traineeship under the supervision of a licensed physical therapist.

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As far as the Board has been able to determine, the only “non-approved schools” of physical therapy are located outside the United States and Canada. (The new school of physical therapy located at Shenandoah University will have accreditation completed before it graduates any students.) With foreign-trained therapists, there has been a problem throughout the U. S. with persons getting green cards or temporary occupational visas to work in this country as physical therapists who, once they get to the U. S., find that they do not meet the requirements for licensure in any state. Recent reforms in the immigration laws of the U.S. have created a requirement for internationally educated health care professionals entering the country to meet certain criteria before being granted a visa or applying for licensure. To ensure that those criteria have been met prior to entering the U.S., persons are being required to obtain pre-screening certification. Through the Federation of State Boards of Physical Therapy, the Foreign Credentialing Commission on Physical Therapy has been authorized to review credentials for the purpose of determining eligibility to be licensed as a physical therapist.

The Board is proposing that certification by the FCCPT be required for international candidates from non-approved educational programs. From its review of the criteria for certification by FCCPT, the Board determined that in every way its requirements met or exceeded Virginia’s requirements for licensure, with one exception – a traineeship in the U.S. The Board will continue to require a

traineeship in Virginia to ensure through a period of supervised practice that the foreign-trained applicant has the knowledge, skills and English proficiency to communicate with and practice safely on patients in the Commonwealth. Requiring certification by FCCPT will eliminate the need for submission to the board of documents on educational programs, equivalency of degrees, translations from embassies, proof of English proficiency, and verification of licensure status in another country.

### **Clarification of practice responsibilities.**

The Code of Virginia requires a referral from a doctor of medicine, osteopathy, chiropractic, podiatry or dental surgery for treatment by a physical therapist. In 18 VAC 85-31-90, the title clearly referred to those particular practitioners, but the regulation spoke of the “referring practitioner”. As a result, there have been questions about whether a nurse practitioner or a physician assistant working for physician could make the referral as the “referring practitioner.” An amendment will clarify the requirement and make it explicitly consistent with the Code.

Currently, regulations provide for the practice and supervision of a physical therapy aide; such a category of practitioner was not created in the statute and therefore should not be created by regulation. The proposal establishes a definition for “unlicensed personnel” and utilizes that terminology in the regulation.

Two other practice issues have been addressed to specify more clearly the requirements and policies of the Board. Supervision by a physical therapist of trainees is restricted to no more than three; the proposed amendment would clarify that it means three trainees *at any one time*. The clarification would assure that a physical therapist can provide direct supervision to any three trainees at any given time. The schedule for re-evaluation by a physical therapist of a patient being treated by a physical therapist assistant has been edited for greater clarity.

## **h. Statement on alternatives considered.**

### **Inactive licensure.**

The inactive licensure status will be beneficial to practitioners who are not currently living or practicing in the Commonwealth. They will be able to maintain a license at a reduced cost (\$70 for physical therapists and \$35 for physical therapist assistants). If they choose to reactivate and return to practice, they will not have to apply for reinstatement or pay back renewal fees and penalty fees. They will only have to indicate that they have the required hours of active practice in another jurisdiction or have served the requisite traineeship and pay the difference between the inactive and active renewal fee. There are no disadvantages to licensees who will have the option of requesting inactive licensure.

The public is well served by a requirement for a board-approved traineeship under supervision if a physical therapist or physical therapist assistant has not been professionally active for a period of time. Such a practice will provide assurance by the observation and guidance of a licensed therapists that the applicant for licensure or relicensure has regained his ability to practice.

Of the 3,553 licensed physical therapists, 842 list an out-of-state address; of the 1,267 licensed physical therapists assistants, 157 list an out-of-state address. Most of those are likely to be

working in Virginia but living in D.C. or a bordering state. However, It is estimated that 30 to 40 may take an inactive status, which could result in a loss of \$750 to \$1,000 in revenue each biennium. What is unknown is how many of those licensees might chose to allow their license to lapse if an inactive licensure status is not available. If the estimated 30 to 40 practitioners who are not practicing in the state let their license lapse, there could be a loss in revenue to the Board of \$3000 to \$4000. Therefore, offering the option of inactive licensure could, in fact, result in a greater retention of revenue to the Board.

### **Licensure requirements for applicants trained in foreign schools**

The TOEFL examination is the nationally recognized standard for determining English proficiency for internationals seeking to practice a profession in the U.S. To require a different standard would be burdensome, since the TOEFL exam is readily available at schools located in other countries. Students who can clearly demonstrate English proficiency will not be required to take the TOEFL exam.

Since pre-screening is required for entry into the U.S., applicants who have to get FCCPT certification will not have an unnecessary burden or barrier to licensure. The pre-screening process will eliminate the unfortunate situation of a foreign-trained physical therapist sacrificing to come to the U.S. only to find that he is not eligible to sit for the examination or to become licensed in any state. Pre-screening may also reduce the extremely high failure rate for foreign-trained graduates on the national licensure examination (out of the 30 foreign-trained applicants currently pending with the Board of Medicine, 27 have already failed the licensure examination at least once).

#### **i. Statement of clarity.**

Prior to the adoption of proposed regulations by the Board, the Advisory Board on Physical Therapy and the Legislative Committee discussed the changes in open sessions. The clarity and reasonableness of the language which was adopted had the approval of the physical therapists, the Assistant Attorney General who worked with the Advisory Committee in drafting regulatory language, and members of the Board.

Greater clarity in the language of the regulation with respect to the practice of physical therapy will serve to ensure more consistent compliance with regulations. Licensees will not inadvertently or unintentionally violate some provision of the requirements nor will they be pressured to accept a patient from a practitioner who is not authorized by law to make such a referral. The public is better protected by regulations which are specific in their requirements for practice and for supervision of unlicensed persons working in a physical therapy practice.

#### **j. Schedule for review of regulation.**

The proposed amendments to these regulations will be reviewed following publication in the Register and the 60-day public comment period. If there are any oral or written comments received, the Board will consider revisions to the proposal prior to adoption of final regulations.

Public Participation Guidelines of the Board of Medicine (18 VAC 85-10-10 et seq.) require a thorough review of regulations each biennium. Therefore, the Advisory Board on Physical Therapy and the Legislative Committee of the Board will again review this set of regulations in 2001 and will bring any recommended amended regulations to the full board for consideration.

In addition, the Board receives public comment at each of its meetings and will consider any request for amendments. Petitions for rule-making also receive a response from the Board during the mandatory 180 days in accordance with its Public Participation Guidelines.

## **k. Anticipated Regulatory Impact**

### **Projected cost to the state to implement and enforce:**

(i) Fund source: As a special fund agency, the Board of Medicine must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures:

The agency will incur some costs (less than \$2000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities. Since these regulations are being amended simultaneously with other regulations of the Board, the costs of mailings, meetings and hearings will be shared by several professions. In addition, every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

The Board will incur some costs for review of an application to reactivate an inactive license; it will be necessary to verify that competency requirements have been met and that an applicant who has been licensed in another jurisdiction has not had disciplinary action taken or pending. Since the number who will reactivate each year is expected to be small, that effort can be performed by the current staff and costs absorbed within the budget of the Board.

Use of the Foreign Credentialing Commission on Physical Therapy may result in less staff and board time being spent reviewing an application package for a foreign trained therapist; the actual cost-savings, however, is likely to be insignificant. It is not expected that there will be any additional costs to the Board for compliance enforcement.

### **Projected cost on localities:**

There is no projected costs to localities.

### **Description of entities that are likely to be affected by regulation:**

The entities that are likely to be affected by these regulations would be licensed physical therapists, licensed physical therapy assistants, and unlicensed persons who perform assigned tasks under the supervision of a physical therapist or a physical therapist assistant.

**Estimate of number of entities to be affected:**

There are 3,553 physical therapists and 1,267 physical therapy assistants licensed in Virginia. For the vast majority, there should be no additional cost for compliance with these regulations.

For those practitioners who are taking a leave of absence or who are living out-of-state, there may be a percentage who would choose to take the inactive status and avoid the renewal requirements for continuing learning but it is not known how many licensees would do so. Of the 3,553 licensed physical therapists, 842 list an out-of-state address; of the 1,267 licensed physical therapists assistants, 157 list an out-of-state address. Most of those are likely to be working in Virginia but living in D.C. or a bordering state. It is estimated that 30 to 40 may take an inactive status, which would be a loss of \$750 to \$1,000 in revenue each biennium. What is unknown is how many of those licensees might chose to allow their license to lapse if an inactive licensure status is not available. If the estimated 30 to 40 practitioners who are not practicing in the state let their license lapse, there could be a loss in revenue to the Board of \$3000 to \$4000. Therefore, offering the option of inactive licensure could, in fact, result in a greater retention of revenue to the Board.

The active renewal fee in Virginia is \$100 for physical therapists and \$70 for physical therapist assistants each biennium; the proposed inactive renewal fee is \$70 and \$35 per biennium; so the cost of licensure renewal should not be a major factor in a therapist's decision to seek inactive status.

For a very small number of applicants (less than 5 per year) who graduated from approved schools located outside the U. S. or Canada, there will be a new cost for taking the Test of English as a Foreign Language, unless they are able to document English competency by some other means. The total fee of TOEFL is \$100, paid to the testing service; that fee includes the charge by the Sylvan Centers for administration of the examination. There is an additional charge of \$11 for providing the score to the state where the applicant is applying.